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IDAHO PUBLIC  
UTILITIES COMMISSION

DONOVAN E. WALKER  
Lead Counsel  
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December 11, 2015

**VIA HAND DELIVERY**


Jean D. Jewell, Secretary  
Idaho Public Utilities Commission  
472 West Washington Street  
Boise, Idaho 83702

Re: Case No. IPC-E-12-18  
Hidden Hollow Energy 2, LLC — Settlement Stipulation and Joint Motion to  
Approve Settlement Stipulation for Dismissal with Prejudice

Dear Ms. Jewell:

Enclosed for filing in the above matter are an original and seven (7) copies of a  
Settlement Stipulation and Joint Motion to Approve Settlement Stipulation for Dismissal  
with Prejudice.

Very truly yours,



Donovan E. Walker

DEW:csb  
Enclosures

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Attorneys for Complainant

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**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

HIDDEN HOLLOW ENERGY 2 LLC,

Complainant,

v.

IDAHO POWER COMPANY,

Respondent.

CASE NO. IPC-E-12-18

SETTLEMENT STIPULATION AND  
JOINT MOTION TO APPROVE  
SETTLEMENT STIPULATION FOR  
DISMISSAL WITH PREJUDICE

This settlement stipulation ("Settlement Stipulation" or "Stipulation") is entered into between Idaho Power Company ("Idaho Power" or "Company") and Hidden Hollow Energy 2 LLC (sometimes referred to in this Stipulation as "Hidden Hollow"), hereafter jointly referred to as "Parties." The Parties hereby agree as follows.

**I. INTRODUCTION AND MOTION**

1. The terms and conditions of this Settlement Stipulation are set forth herein. The Parties agree that this Settlement Stipulation represents a fair, just, and reasonable compromise of the dispute(s) between the Parties and that this Settlement Stipulation is in the public interest. The Parties maintain that the Settlement Stipulation as a whole and its acceptance by the Idaho Public Utilities Commission ("Commission")

represent a reasonable resolution of all issues between the Parties identified herein. Therefore, the Parties hereby respectfully move the Commission, in accordance with RP 56 and RP 274-76, for an Order approving the Settlement Stipulation executed between the Parties and all of its terms and conditions without material change or condition, and for dismissal of this matter with prejudice.

## **II. BACKGROUND**

2. On December 8, 2010, Idaho Power and Hidden Hollow entered into a Firm Energy Sales Agreement ("FESA") pursuant to the terms and conditions of the various Commission Orders applicable to such agreements pursuant to the Public Utility Regulatory Policies Act of 1978 ("PURPA"). See IPUC Case No. IPC-E-10-44. On February 11, 2011, the Commission issued Order No. 32180 approving the FESA. The Parties selected February 28, 2012, as both Hidden Hollow's Scheduled First Energy Date and Scheduled Operation Date in the FESA. See Appendix B to the FESA.

3. On February 7, 2012, Hidden Hollow sent a letter to Idaho Power claiming an event of force majeure had occurred pursuant to the December 2010 FESA, based upon its fuel supply of landfill gas and upon issues related to air quality permitting. Hidden Hollow sent another letter to Idaho Power on May 16, 2012, claiming an additional, separate, and distinct event of force majeure related to both Ada County's and Idaho Power's separate contracts with Dynamis Energy, LLC, for a power generation facility also utilizing trash from the landfill as its fuel source.

4. On May 3, 2012, Idaho Power sent a letter to Hidden Hollow stating that disruptions in fuel supply did not constitute events of force majeure pursuant to the FESA, and further stating that Hidden Hollow had missed its Scheduled Operation Date of February 28, 2012, and that Hidden Hollow must commence operations by June 1, 2012,

(within 90 days of the Scheduled Operation Date) or it could be in material breach of the FESA and subject to termination and damages. On June 14, 2012, Idaho Power sent a letter to Hidden Hollow stating that the FESA had been terminated and seeking payment of the Delay Liquidated Damages provided for in the FESA. Idaho Power subsequently collected \$144,000 in Delay Liquidated Damages from the Delay Damage Security that Hidden Hollow 2 LLC had posted with Idaho Power pursuant to the FESA.

5. On July 13, 2012, Hidden Hollow filed a Complaint with the Commission against Idaho Power requesting that the Commission: (1) “rescind and retract” the termination of the FESA; (2) require Idaho Power to “return the \$144,000 Delay Liquidated Damages” to Hidden Hollow; and (3) and determine that (a) Hidden Hollow is not in material breach of the FESA and (b) its two claimed incidents of force majeure are valid events of force majeure under the FESA.

6. Based upon settlement discussions, and as a compromise of the respective positions of the parties, and for other consideration as set forth below, the Parties agree to the following terms:

### **III. TERMS OF THE SETTLEMENT STIPULATION**

7. The FESA dated December 8, 2010, and approved by the Commission under Order No. 32180 on February 11, 2011, be terminated as of the date this Stipulation is approved by the Commission.

8. Idaho Power Company shall return to Hidden Hollow Energy 2 LLC the Delay Liquidated Damages in the amount of \$144,000.00 within thirty days of the Commission’s approval of this Settlement Stipulation.

9. The Parties agree that this Stipulation and this disposition of these matters is in the public interest and that all of the terms and conditions are fair, just, and

reasonable. Each Party, along with its current and former partners, joint venturers, representatives, successors, assigns, affiliates, subsidiaries, parents, divisions, departments, lenders, investors, shareholders, officers, directors, employees, managers, agents, insurers, and predecessors ("Releasing Parties") fully, finally, and forever releases, discharges, and covenants not to sue the other Party and its current and former partners, joint venturers, representatives, successors, assigns, affiliates, subsidiaries, parents, divisions, departments, investors, lenders, shareholders, officers, directors, employees, managers, agents, insurers, and predecessors ("Released Parties") to the broadest extent allowed by law from and for any and all claims, actions, causes of action, debts, damages, demands, offsets, payments, costs, rights, liabilities, charges, and expenses, direct or indirect, regardless of the legal or equitable theory on which they are based, whether known or unknown, liquidated or unliquidated, accrued or unaccrued, asserted or unasserted, arising from or relating to the Firm Energy Sales Agreement, and Case Nos. IPC-E-10-44 and IPC-E-12-18.

10. All terms and conditions of this Stipulation are subject to approval by the Commission, and only after such approval, without material change or modification, has been received shall the Stipulation be valid. The Parties hereby submit this Stipulation to the Commission and recommend approval in its entirety pursuant to RP 274-76. The Parties shall support this Settlement Stipulation before the Commission and shall not appeal a Commission order approving the Stipulation or an issue resolved by the Stipulation.

11. If this Settlement Stipulation is challenged by anyone who is not a Party, then each Party reserves the right to file testimony, cross-examine witnesses, and put on such case as they deem appropriate to respond fully to the issues presented,

including the right to raise issues that are incorporated in the settlements embodied in this Settlement Stipulation. Notwithstanding this reservation of rights, the Parties agree that they will continue to support the Commission's adoption of the terms of this Settlement Stipulation.

12. If the Commission or any reviewing body on appeal rejects any part or all of this Settlement Stipulation or imposes any additional material conditions on approval of this Settlement Stipulation, then each Party reserves the right, upon written notice to the Commission and the other Party to this proceeding within fourteen (14) days of the date of such action by the Commission, to withdraw from this Settlement Stipulation. In such case, no Party shall be bound or prejudiced by the terms of this Settlement Stipulation and each Party shall be entitled to seek reconsideration of the Commission's order, file testimony as it chooses, cross-examine witnesses, and do all other things necessary to put on such case as it deems appropriate. In such case, the Parties immediately will request the prompt reconvening of a prehearing conference for purposes of establishing a procedural schedule for the completion of IPUC Case No. IPC-E-12-18, and the Parties agree to cooperate in development of a schedule that concludes the proceeding on the earliest possible date, taking into account the needs of the Parties in participating in hearings and preparing briefs.

13. The Parties agree that this Settlement Stipulation is in the public interest and that all of its terms and conditions are fair, just, and reasonable.

14. This Settlement Stipulation sets forth the complete understanding of the Parties, and this Settlement Stipulation includes no other promises, understandings, representations, arrangements or agreements pertaining to the subject matter of this Settlement Stipulation, or any other subject matter, not expressly contained herein.

15. All terms and conditions of this Settlement Stipulation, including the obligations of the Parties, are subject to the Commission's approval of this Settlement Stipulation in accordance with its terms and conditions and upon such approval being upheld on appeal, if any, by a court of competent jurisdiction. Only after such approval, without material change or modification, has been received shall the Settlement Stipulation be valid.

#### **IV. PROCEDURE**

16. Pursuant to RP 274, the Commission has discretion to determine the manner with which it considers a proposed settlement. In this matter, the Parties have reached agreement on a final resolution to this case. This Settlement Stipulation is reasonable and in the public interest. The Parties request that the Commission approve the Settlement Stipulation without further proceedings.

17. In the alternative, should the Commission determine that further proceedings are required to consider the Settlement Stipulation, pursuant to RP 201, the Parties believe the public interest does not require a hearing to consider the issues presented by this Motion and request it be processed as expeditiously as possible by Modified Procedure, without waiving the right to a hearing on the previously disputed matters in this proceeding should the Commission reject the settlement.

#### **V. REQUESTED RELIEF**

NOW, THEREFORE, the Parties respectfully request that the Commission enter its Order approving the Settlement Stipulation without material change or condition, and dismissing Case No. IPC-E-12-18 without further proceedings.



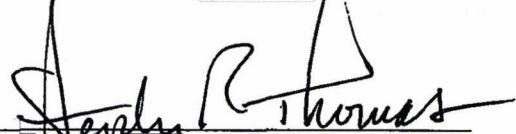
DATED this 11<sup>th</sup> day of December 2015.

Idaho Power Company

By 

Donovan E. Walker  
Attorney for Idaho Power Company.

Hidden Hollow Energy 2 LLC

By 

Stephen R. Thomas - Of the Firm  
Moffatt, Thomas, Barrett, Rock &  
Fields, Chartered  
Attorneys for Complainant



## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11<sup>th</sup> day of December 2015 I served a true and correct copy of the SETTLEMENT STIPULATION AND JOINT MOTION TO APPROVE SETTLEMENT STIPULATION FOR DISMISSAL WITH PREJUDICE upon the following named parties by the method indicated below, and addressed to the following:

**Commission Staff**

Donald L. Howell, II  
Deputy Attorney General  
Idaho Public Utilities Commission  
472 West Washington (83702)  
P.O. Box 83720  
Boise, Idaho 83720-0074

☒ Hand Delivered  
☐ U.S. Mail  
☐ Overnight Mail  
☐ FAX  
☒ Email [don.howell@puc.idaho.gov](mailto:don.howell@puc.idaho.gov)

**Hidden Hollow Energy 2, LLC**

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Christa Bearry, Legal Secretary